

COMSTOCK TUNNEL
AND
DRAINAGE CO. AND SUTRO TUNNEL CO.

IBLA 83-863 Decided June 7, 1985

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring mining claims abandoned and void. N MC 99895 through N MC 99899; N MC 107728 through N MC 107734; N MC 108740 through N MC 108749.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Generally -- Mining Claims: Recordation

Mining claims located prior to July 26, 1866, and recorded in accordance with the rules and customs of local mining districts were subsequently recognized as valid mining claims. Such claims, if they remain unpatented, are subject to the mining claim recordation requirement of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982).

2. Federal Land Policy and Management Act of 1976: Assessment Work -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

Under the provisions of 43 U.S.C. § 1744 (1982), an owner of an unpatented mining claim must file evidence of annual assessment work or notice of intention to hold prior to Dec. 31 of each year. Such filings must be made within each calendar year, i.e., on or after Jan. 1 and on or before Dec. 30. Failure to file within the calendar year properly results in the claim being extinguished, and therefore abandoned and void.

3. Federal Land Policy and Management Act of 1976: Assessment Work -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

Failure of a lessee or agent of the owner of an unpatented mining claim to make the filings required by

43 U.S.C. § 1744 (1982) provides no basis for reversal of a decision declaring the claim abandoned and void. Congress assigned the owner of the claim the responsibility of making the required filings; the owner must bear the consequence of filings not timely made.

APPEARANCES: James B. Schryver, President, Comstock Tunnel and Drainage Company, for appellants.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

The Comstock Tunnel and Drainage Company and Sutro Tunnel Company have appealed from a July 1, 1983, decision of the Nevada State Office, Bureau of Land Management (BLM), declaring certain unpatented mining claims owned by appellants 1/ to be abandoned and void because appellants had not filed a notice of intent to hold the claims or affidavit of assessment work performed in the proper BLM office by December 30, 1982. 2/

[1] As a threshold question, we must examine whether those mining claims which were located prior to 1866 are mining claims as contemplated by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982). These claims were located at a time when there was no Federal law providing for the location of mining claims. The first Federal

1/ The following claims were declared null and void by BLM's decision: Date of Name of
N MC

<u>Location</u>	<u>Claim</u>	<u>Number</u>
May 1, 1859	Yellow Jacket	99895
May 24, 1859	Crown Point	99896
May 24, 1859	Belcher	99897
Jan. 1, 1887	Segregated Belcher	99898
May 4, 1876	Monumental Twins	99899
Nov. 20, 1859	Imperial North	107728
Jan. 28, 1859	Eclipse	107729
Jan. 28, 1859	Plato	107730
Jan. 28, 1859	Bowers	107731
Jan. 28, 1859	Rice	107732
Jan. 28, 1859	Consolidated	107733
Jan. 28, 1859	Imperial South	107734
Nov. 28, 1902	J.P.	108740
June 18, 1920	West Seg. Belcher	108741
June 16, 1920	West Kentuck	108742
July 1, 1929	Gem	108743
Mar. 27, 1920	Star of Gold	108744
Oct. 22, 1919	Paramount Ext.	108745
May 5, 1920	Cash Box	108746
	(aka Cash Boy)	
May 9, 1922	Hillside	108747
May 9, 1922	Hillside #2	108748
Nov. 15, 1922	Pow Mag	108749
	(aka Poll Meg)	

2/ Consideration of this appeal was suspended by order dated May 8, 1984, pending issuance of the Supreme Court's decision in United States v. Locke, 105 S. Ct. 1785 (1985).

recognition of the validity of mining claims located in Nevada can be found in the Act of May 5, 1866, 14 Stat. 43. This Act states in pertinent part:

And provided further, That all possessory rights acquired by citizens of the United States to mining claims, discovered, located, and originally recorded in compliance with the rules and regulations adopted by miners in the Pah-Ranagat and other mining districts in the Territory incorporated by the provisions of this act into the State of Nevada shall remain as valid subsisting mining claims; but nothing herein contained shall be so construed as granting a title in fee to any mineral lands held by possessory titles in the mining States and Territories.

Shortly thereafter the Act of July 26, 1866 (14 Stat. 251) was enacted. This Act recognized that rights had been acquired under the system of local rules and recognized and confirmed these rights. See Jennison v. Kirk, 98 U.S. 453 (1897). The Act also gave a means by which a claimant who had located a claim prior to the passage of the Act could acquire title to the claim through patent procedure.

Congress subsequently passed the Act of May 10, 1872, 17 Stat. 91, 30 U.S.C. § 21 (1982). This Act is the foundation of the existing system for acquiring "locatable" mineral rights in the United States, and specifically recognized and preserved those rights acquired under the Act of July 26, 1866. See sections 9 and 12, 17 Stat. at 94-95. As a result of the above-mentioned legislation, the mining claims were recognized as mining claims under the 1872 mining law and were subsequently made subject to the mining claim recordation provisions of FLPMA, 43 U.S.C. § 1744 (1982).

[2] Under section 314 of FLPMA, 43 U.S.C. § 1744 (1982), the owner of an unpatented mining claim is required to file evidence of annual assessment work or a notice of intention to hold the mining claim prior to December 31 of each year. Such filings must be made each calendar year, i.e., on or after January 1 and on or before December 30. Failure to file within the prescribed period properly results in the claim being extinguished and therefore abandoned and void. United States v. Locke, supra.

The claims at issue adjoin and are intermingled with patented mining claims and other unpatented mining claims owned by appellants. Appellants explain that in 1982, their lessee, Houston International Minerals Corporation, was attempting to terminate its lease. During the assessment year, the lessee was conducting mining and other operations on the claims and one of its obligations was to perform assessment work and file the proof of labor. Appellants do not deny the omission of this required filing in 1982 but state that assessment work done in the assessment year of 1982 was in excess of \$1 million.

[3] Appellants attribution of their omission to their former lessee provides no basis for reversal of BLM's decision. In section 314 of FLPMA, Congress assigned the owner of the claim the responsibility for making the required filings; the owner must bear the consequence of filings not timely made. Cf. United States v. Boyle, __ U.S. __, 105 S. Ct. 687 (1985) (penalty properly imposed on taxpayer whose attorney filed a late return on taxpayer's behalf).

Appellants believe "the substance and longevity of our ownership of the claims and the fact that the claims have been and currently are being actively mined" provides sufficient justification for reversal of BLM's decision. Appellants also state that BLM's regulations do not conform with the conditions imposed by FLPMA. However, appellants do not allege timely compliance with the statutory requirements. The facts that appellants have worked the claims previously, had expended large sums of money on the claims in the assessment year, and continue to actively mine, provide no basis for reversing the decision below.

As previously noted, this matter was suspended pending Supreme Court determination in United States v. Locke, supra. In Locke the Supreme Court found it to be the intent of Congress to extinguish those claims for which timely filings were not made. The Supreme Court further found that failure to file on time, in and of itself, causes the claims to be lost. United States v. Locke, supra at 1794-96. Appellant's failure to file a notice of intent to hold, an affidavit of assessment work performed, or a detailed report related thereto, as required by 43 U.S.C. § 1744(a)(1) (1982), caused appellant's claims to be abandoned and void.

Appellants also state that the voiding of their claims without an opportunity to be heard violates their right to due process. In United States v. Locke, supra at 1799-1800, the Court answered a similar contention as follows:

[T]he Act provides [claim owners] with all the process that is their constitutional due. In altering substantive rights through enactment of rules of general applicability, a legislature generally provides constitutionally adequate process simply by enacting the statute, publishing it, and, to the extent the statute regulates private conduct, affording those within the statute's reach a reasonable opportunity both to familiarize themselves with the general requirements imposed and to comply with those requirements. * * * [E]very claimant in appellees' position already has filed once before the annual filing obligations come due. That these claimants already have made one filing under the Act indicates that they know, or must be presumed to know, of the existence of the Act and of their need to inquire into its demands.

This inadvertent extinguishment of these historic claims resulting from failure to make the requisite filing in 1982 becomes especially regrettable when one considers the great efforts the owners expended in order to satisfy the FLPMA requirement that copies of the location notices be recorded with BLM. 3/ However, it provides us with no basis for a reversal of BLM's decision.

3/ An explanation of these difficulties is set forth in Appendix A, an excerpt from a statement of supplemental information submitted when appellants were required to make their initial recordation of the notices of location for the claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

APPENDIX A

Following are excerpts from appellants' supplemental statement of information:

For reasons which more fully appear in the material which follows, the relevant location notices for most of the claims with which this Statement is concerned cannot be found of record. At the time most of these claims were located, neither federal nor territorial law nor district rules required the recordation of mining claims. In the absence of such laws or rules, failure to record has no effect upon the validity of a claim.

The first meeting of the miners of the Gold Hill Mining District was held on June 11, 1859. Most of the claims with which this Statement is concerned were located prior to that date * * *, when there were neither district rules governing the location of claims nor a recorder of any kind empowered to record the claims. Nevertheless, possessory title of such early claims was customarily recognized by the miners of the vicinity. Such customs were expressly recognized and approved in the 1866 Act and many of the very earliest claims in the Gold Hill Mining District were subsequently patented under that Act.

* * * The very earliest records of the Gold Hill Mining District appear to have been kept not in a book, but on loose sheets of paper:

The book which is handed down to the present time as containing copies of original notices of location made by Houseworth deserves preservation as a relic of mining customs twenty years ago, but it is surprising that it should ever be cited as an authoritative record. Even if it contains the earliest transcripts, which is at least questionable -- for it was currently reported in 1860 that the first records were made on loose sheets of paper, of which some were lost and some destroyed -- yet it shows such marks of carelessness, erasures, irregular additions, and it is scarcely unwarrantable to add, positive fraud, that its legal value is materially diminished.

The manner in which the first book of Gold Hill mining records was kept is vividly described by a contemporary observer:

V. A. Houseworth, the "village blacksmith," was the first recorder at Gold Hill, and the book of records was kept at a saloon, where it lay upon a shelf behind the bar.

The "boys" were in the habit of taking it from behind the bar whenever they desired to consult it, and if they thought a location made by them was not advantageously bounded they altered the course of

their lines and fixed the whole thing up in good shape, in accordance with the latest developments.

When the book was not wanted for this use, those lounging about the saloon were in the habit of snatching it up, and batting each other over the head with it.

The old book is now in the office of the county recorder at Virginia City and is beginning to be regarded as quite a curiosity. It shows altered dates, places where leaves have been torn out, and much other rough usage.

A few years later the condition of this book was described as follows:

. . . The leaves are yellow with age, and have been thumbed for so many years that the corners are worn off, and half -- sometimes nearly the whole -- of the names of the locators are missing . . . In a short time it will become useless, at its present rate of decay. The County Recorder is of the opinion that it will be necessary to copy its contents into a new and substantial volume, to preserve the records from oblivion.

It appears that the volume designated Book A, Gold Hill Records now on record in the Storey County Recorder's Office is the "new and substantial volume" mentioned in the last quotation. It is impossible to determine what errors and omissions have resulted in the process of copying the old book into the new. In researching the records, one becomes aware of the fact that the page numbers given in the various indices do not always correspond to the page numbers of the "new" record book, thus suggesting that no attempt was made to conform the pagination of the "new" record book to that of the old. [Footnotes omitted.]

